## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

IRENE RAINEY Claimant	)
VS.	) ) ) Docket No. 206,726
LONE TREE RETIREMENT COMMUNITY Respondent	) )
AND	
WAUSAU UNDERWRITERS Insurance Carrier	

## <u>ORDER</u>

Claimant requests review of a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish on April 29, 1996.

## ISSUES

The Administrative Law Judge found claimant failed to sustain her burden of proving her injury arose out of her employment. Her request for preliminary benefits was denied. Claimant asks the Appeals Board to review that finding.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds that the Order of the Administrative Law Judge should be affirmed.

Claimant testified that on October 13, 1995 she was employed as an LPN at respondent retirement community. At approximately noon on that date she went to the cafeteria for lunch. While there, at approximately 12:15 p.m., her left foot went numb. She described it as feeling like it was asleep. Claimant decided to "walk it off" by going outside to smoke a cigarette. As she was walking down the hall she felt a sharp pain behind her left knee. Also, her lower leg felt numb. Claimant thought she had pulled a muscle in her knee. She wrapped it with an ACE bandage and took Tylenol but the pain got worse and she ultimately asked to go home. The administrator of the retirement community, Randy Jost, testified that claimant said she had not done anything at work to cause her leg pain and numbness. He asked her if she wanted to go to a doctor. Claimant declined his offer

and said she just wanted to go home. Claimant does not allege any trauma precipitated her onset of symptoms.

For a claim to be compensable, claimant must establish personal injury by accident arising out of and in the course of employment. K.S.A. 44-501(a). For a claim to arise "out of" employment, its cause or origin must develop out of the nature, conditions, obligations and incidence of employment. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 689 P.2d 837 (1984). The facts presented do not lend themselves to such a finding.

It is not always necessary for an injury to be caused by trauma or some form of physical force before it can be found compensable. See Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978). However, when an injury is attributable to a personal condition of the employee, and no other factors contribute to the injury, the injury is not compensable. Martin v. Unified School District No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980) and Bennett v. Wichita Fence Co., 16 Kan. App. 2d 458, 824 P.2d 1001, rev. denied 250 Kan. 804 (1992).

K.S.A. 1995 Supp. 44-508(e) provides:

"An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living."

In workers compensation proceedings the claimant bears the burden of proof to establish her claim. "Burden of proof" is defined in K.S.A. 1995 Supp. 44-508(g) as:

"[T]he burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

The burden of proof is "on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record." K.S.A. 44-501(a).

Based upon the record as it currently exists, the Appeals Board finds claimant has not met her burden of proving that she sustained personal injury by accident arising out of her employment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the April 29, 1996 preliminary hearing Order of Jon L. Frobish should be, and is hereby, affirmed.

IT IS SO ORDERED.		
Dated this	day of August 1996	

c: Irene Rainey, Meade, KS Shirla R. McQueen, Liberal, KS Jon L. Frobish, Administrative Law Judge Philip S. Harness, Director